**HP & T Incorporated Hyde Park Construction Company and Lovett D. Thornton *and* Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO.** Case 7–CA–31110

February 13, 1992

## DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon a charge filed by the Union October 11, 1990, and an amended charge filed by the Union November 16, 1990, the General Counsel of the National Labor Relations Board issued a complaint against HP & T Incorporated, Hyde Park Construction Company and Lovett D. Thornton, the Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act, a compliance specification, and an order consolidating the complaint and compliance specification. On February 4, 1990, the Respondents filed an answer.

On about November 25, 1991, the Respondents, the Union, and the General Counsel entered into a stipulation, in which the General Counsel withdrew the allegations of the complaint with respect to Hyde Park Construction Company and Lovett D. Thornton, Respondent HP & T withdrew its answer, and all parties waived the filing of an answer to the complaint and compliance specification. In the stipulation, the parties also agreed that the stipulation, complaint, and compliance specification shall constitute the entire record in this proceeding and that, upon motion by the General Counsel, the Board may, without any further notice of proceedings, issue a judgment on the pleadings with respect to Respondent HP & T.

On December 13, 1991, the General Counsel filed a Motion for Summary Judgment. The General Counsel's motion contends that, in view of Respondent HP & T's withdrawal of its answer, all allegations in the complaint and the compliance specification should be deemed to be true.

On December 30, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. No response has been filed. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint and Compliance Computation shall be deemed to be admitted true and may be so found by the Board." Section 102.56(c) of the Board's Rules and Regulations provides that the allegation in the compliance specification shall be deemed admitted if an answer is not filed within 21 days from the service of the specification. Withdrawal of the answer is tantamount to a failure to file a timely answer to the complaint and compliance specification.

In light of the withdrawal of the answer and the parties' stipulation, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent HP & T, Incorporated, a Michigan corporation with a facility in Detroit, Michigan, is engaged in the installation of plaster and drywall walls and partitions and related work in buildings under construction by other firms. Respondent HP & T annually performed services valued in excess of $100,000, of which services valued in excess of $50,000 were performed for a company that annually derives gross revenues in excess of $500,000 from construction activities and purchases goods and materials valued in excess of $50,000 that are shipped directly to its Michigan jobsites from points located outside the State of Michigan. We find that Respondent HP & T is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

Since at least March 31, 1989, the Union has been the exclusive collective-bargaining representative of employees in the following unit appropriate for collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and has been so recognized by Respondent HP & T since that date:

> All journeymen and apprentice plasterers employed by the Respondents, but excluding guards and supervisors as defined in the Act.

Respondent HP & T's recognition of the Union has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period June 1, 1989, to May 31, 1991. That contract requires, inter alia, the payment of monthly payments to certain designated fringe benefit funds, including health insurance, pension, vacation, and apprenticeship. Respondent HP & T failed and refused to make the fringe benefit contributions in these funds for the months of May and June 1990, and for any subsequent months for which fringe benefit contributions are owed. Respondent HP & T failed and refused to make these contributions without giving notice to the Union and affording it an opportunity to bargain. It thereby modified the 1989–1991 collective-bargaining agreement without the consent of the Union and in noncompliance with Section 8(d) of the Act.

For the months of May and June 1990, Respondent HP & T deducted dues from its employees' wages without authorization by the 1989–1991 collective-bargaining agreement and without appropriate dues-checkoff authorizations signed by the employees. The dues deducted were not remitted to the Union. We find, based on the above, that Respondent HP & T has violated Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

By unilaterally refusing to make contractually required fringe benefit fund contributions and by deducting dues from employees' wages without contractual authorization or signed dues checkoff authorizations from employees and retaining the dues, Respondent HP & T has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that Respondent HP & T has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order Respondent HP & T to make the Union and bargaining unit employees whole for its failure to make fringe benefit fund contributions,[1] as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), the amounts as set forth in Schedules A to D of the compliance determination totaling $15,293.39, with interest as computed in *New Horizons for the Retarded*, 293 NLRB 1173 (1987).

We shall order Respondent HP & T to remit to employees all dues unlawfully deducted, as set forth in Schedule E of the compliance determination totaling $908.77, with interest as computed in *New Horizons*, supra.

## ORDER

The National Labor Relations Board orders that the Respondent, HP & T Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make contractually required fringe benefit contributions on behalf of unit employees represented by Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO. The appropriate unit is:

> All journeymen and apprentice plasterers employed by the Respondents, but excluding guards and supervisors as defined in the Act.

(b) Deducting dues from the wages of bargaining unit employees without contractual authorization and without signed checkoff authorizations from employees and retaining the dues.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Tender all contractually required fringe benefit fund contributions and make any bargaining unit employees adversely affected by its unlawful conduct whole for any loss suffered as a result of that conduct in the manner set forth in the remedy section of this decision.

(b) Remit all unlawfully deducted dues to bargaining unit employees in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to agents of the National Labor Relations Board, for examination and copying, all records that are needed to analyze and determine the amounts of money dues under the terms of the Board's Order.

(d) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[2]

[1] Any additional amounts applicable to delinquent payments shall be paid in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Nation-

*Continued*

Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent HP & T's authorized representative, shall be posted by Respondent HP & T immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent HP & T to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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al Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to make fringe benefit fund contributions on behalf of our employees represented by Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO. The appropriate unit is:

> All journeymen and apprentice plasterers employed by the Respondents, but excluding guards and supervisors as defined in the Act.

WE WILL NOT deduct union dues from the wages of bargaining unit employees without contractual authorization and without signed checkoff authorizations from the employees and retain the dues.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL tender any delinquent fringe benefit fund contributions required under the contract and reimburse our unit employees for any expenses ensuing from the failure to make those payments with interest.

WE WILL remit to bargaining unit employees all dues unlawfully deducted from their wages with interest.

HP & T CORPORATION